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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,474	08/05/2003	Donald R. Loveday	1999U026.US-CON2	6827
25959	7590	10/28/2004	EXAMINER	
UNIVATION TECHNOLOGIES LLC 5555 SAN FELIPE, SUITE 1950 HOUSTON, TX 77056			PASTERCZYK, JAMES W	
			ART UNIT	PAPER NUMBER
			1755	

DATE MAILED: 10/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/634,474

Applicant(s)

LOVEDAY ET AL.

Examiner

J. Pasterczyk

Art Unit

1755

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-22 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/20/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

1. This Office action is in response to the amendment and IDS filed 8/20/04 and refers to the Office action mailed 7/7/04.
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
3. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimura as cited in and for the reasons of record given in the previous Office action.
4. Claims 1-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sugimura in view of any of Liang, McConville, and Schrock as cited in and for the reasons of record given in the previous Office action.
5. Applicant's arguments filed 8/20/04 have been fully considered but they are not persuasive.

The examiner first notes that the 35 USC 112, first paragraph enablement rejection has been withdrawn due to the narrow showing in the specification as pointed out by applicants in their latest amendment. However, the examiner further notes that this showing is quite narrow indeed, but the MPEP appears to require no more as applicants have pointed out. Whether this showing is broad enough for the breadth of the claims as currently recited is beyond the ability of the Patent Office to probe since it has no facilities to do so.

Regarding the obviousness rejection, applicants contend that the narrow showing of the present specification is sufficient for enablement. Hence, only a narrow disclosure in a prior art reference would be necessary to meet the limitations of the present claims, including the result of the variation in temperature affecting the molecular weight distribution as currently claimed since the catalyst art is highly unpredictable as applicants point out. This unpredictability also

results in the ability of the Office to contend that since all the limitations of the chemical compounds of the present claims appear to be found in the prior art, either in one reference alone as found in the first prior art rejection or in the combination of references of the second prior art rejection, the actual recitation of this limitation in the prior art regarding the effect of changes in polymerization temperature need not be explicit since it would be within the references regardless of explicit disclosure. It then becomes the burden of applicants to show, not argue, that the prior art does not in fact contain this limitation. This has not been done. Likewise, the results given in the prior art cited in the latest IDS is not necessarily probative of the present claims since as applicants have pointed out the catalyst arts are highly unpredictable and the results obtained with one catalyst system would not necessarily be congruent to those of another catalyst system. The proper comparison is between the claimed catalyst system and the closest prior art of record, not merely any prior art of record. Although applicants point out that no trend appears evident in the Liang, McConville, or Schrock references, no similar showing has been done for the Sugimura reference.

**6. THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. Pasterczyk whose telephone number is 571-272-1375. The examiner can normally be reached on M-F from 9 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mark Bell, can be reached at 571-272-1362. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



J. Pasterczyk

AU 1755

10/20/04



Mark L. Bell  
Supervisory Patent Examiner  
Technology Center 1700